

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANCEL MONTENELLI,

Plaintiff,

v.

EL CANTON REGIO CORPORATION
and JOHN DOE,

Defendants.

Case No. 1:18-cv-06245
Honorable John Robert Blakey

**MONTENELLI'S MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT EL CANTON REGIO CORPORATION**

Plaintiff, Ancel Montenelli, by his attorneys, submits this motion for default judgment pursuant to Fed. R. Civ. P. 55(b)(1) and Fed. R. Civ. P. 54(b) against Defendant, El Canton Regio Corporation, and states as follows:

1. On September 12, 2018, Plaintiff filed a two-count complaint against the Defendants. [Doc. #1]. Count one seeks relief under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Count two is brought under the Illinois Human Rights Act (IHRA”), 775 ILCS 5/1-101, *et seq.*

2. On January 25, 2019, Plaintiff filed a request for a Clerk's Default against Defendant El Canton Regio Corporation ("El Canton") pursuant to Fed. R. Civ. P. 55(a). [Doc. #12].

3. On March 27, 2019, the Court entered an order of default against El Canton after it failed to appear. [Doc. #18]. On the same day, Plaintiff served a copy of the Court's March 27, 2019 order on Alejandro Hutardo, El Canton's registered

agent, and Daniel Gutierrez, Jr., El Canton's president, in compliance with the Court's March 27, 2019 order. [Doc. #19].

4. On April 17, 2019, El Canton again failed to appear at the scheduled status hearing. [Doc. #21].

5. Under the ADA, "[i]n any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee, including litigation expenses, and costs..." 42 U.S.C. § 12205.

6. Plaintiff retained Scott R. Dinin to represent him in this action. Mr. Dinin has been licensed to practice law since 1996 and has been the president and owner of Scott R. Dinin, P.A. law firm specializing in civil rights and ADA discrimination litigation since 2010. A copy of Mr. Dinin's resume is attached hereto as **Exhibit 1**.

7. To date, Mr. Dinin billed the Plaintiff \$12,959.80 in attorney's fees and expenses. A copy of Mr. Dinin's affidavit is attached hereto as **Exhibit 2**. A copy of a spreadsheet showing Mr. Dinin's time entries and expenses is attached hereto as **Exhibit 3**.

8. Plaintiff is represented by local counsel, Schain, Banks, Kenny & Schwartz, Ltd. Kevin A. Ameriks is an attorney with Schain Banks and has been licensed to practice law since 2007. Thomas J.K. Schick is an attorney with Schain Banks and has been licensed to practice law since 2018.

9. To date, Schain Banks billed the Plaintiff \$1,103.25 in attorney's fees. A copy of Schain Banks' billing memorandum is attached hereto as **Exhibit 4**. The foregoing fees are reasonable.

10. Under Fed. R. Civ. P. 55(b)(1), "[i]f the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person."

11. Plaintiff is entitled to an amount of \$14,063.05 in attorney's fees and expenses and injunctive and declaratory relief as prayed for in the Complaint

12. Plaintiff reserves the right to seek recovery against the owner of El Canton who was sued as a John Doe Defendant in this action.

Wherefore, Plaintiff, Ancel Montinelli, requests that this Court enter default judgment pursuant to Fed. R. Civ. P. 55(b)(1) against Defendant, El Canton Regio Corporation, in the amount of \$14,063.05, and the following further relief:

- a. The Court declares that the lessee/operator Defendant El Canton Regio Corporation's access barriers at the Canton Regio Restaurant, located at 1510 W. 18th St., Chicago IL 60608, are violative of the ADA and order the restaurant to be closed to the public until such time as it is deemed by this Court to be accessible to and usable by individuals with disabilities to the full extent required by the Title III of the ADA and Section V of the Illinois Human Rights Act;

- b. The Court enter an Order requiring the lessee/operator Defendant El Canton Regio Corporation to alter the restaurant such that it is accessible to and usable by individuals with disabilities to the full extent required by the Title III of the ADA and Section 5 of the Illinois Human Rights Act;
- c. The Court enter an Order directing the lessee/operator Defendant El Canton Regio Corporation to evaluate and neutralize their policies, practices and procedures toward persons with disabilities, for such reasonable time so as to allow the parties (jointly and severally) to undertake and complete corrective procedures to the building and the attendant business (restaurant) therein; and
- d. The Court determine there is no just reason for delay of this order and direct entry of a final judgment on Plaintiff's claims against Defendant El Canton Regio Corporation; and
- e. Awards such other and further relief as it deems necessary, just and proper.

Kevin A. Ameriks
Thomas J.K. Schick
Schain, Banks, Kenny, & Schwartz, Ltd.
70 West Madison Street, Suite 5300
Chicago, Illinois 60602
(312) 345-5700
Attorney No. 6292277

ANCEL MONTENELLI

By: /s/ Kevin A. Ameriks

SCOTT R DININ, ESQ.

JD, Nova Southeastern University Sheppard Broad College of Law, Florida (1994)
MBA, University of San Diego, California (1992)
B.S., Political Science Arizona State University, Arizona (1989)

Member Florida Bar (1996)

Admitted to Practice:

- U.S. District Court Southern District of Florida
- U.S. District Court Middle District of Florida
- U.S. District Court Northern District of Florida
- U.S. District Court, District of Colorado
- U.S. District Court, Southern District of Texas
- U.S. District Court for the Central District of Illinois
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Southern District of Illinois

Scott R. Dinin, P.A.

President, Owner

Miami, FL

2010 – present

A boutique law firm specializing in Civil Rights Litigation, ADA Discrimination, and Property Damage & Property Insurance Litigation

As principal attorney for the firm, Scott Dinin has filed over three hundred cases in the USDC of various jurisdictions. Scott Dinin has represented over fifty disabled individuals who have been discriminated against and denied rights as guaranteed by Civil Rights legislation, the ADA, the FHA, and state laws. Areas of discrimination which have been successfully identified and lawsuits filed to change the offending entities' policies, practices, procedures, and physical places of accommodation include: representing mobility impaired individuals who have been denied wheelchair access and parking accommodations; and representing blind and deaf individuals who have been denied access or effective communication due to failures to provide assistive devices or services in retail stores, hotels, restaurants, government buildings, correctional facilities, and educational institutions.

Scott Dinin has filed over five hundred actions in Florida circuit courts from the first circuit to the twentieth circuit (with the majority being the first, fourth, tenth, eleventh, and fifteenth, seventeenth, nineteenth and twentieth circuits). These cases generally allege that the Plaintiff's property insurance company(ies) have violated the terms of the Policy(ies) for Property Insurance by failing to honor the Appraisal Clause of those Policies. Plaintiffs have all alleged they were underpaid on valid claims for damages which occurred based upon a covered event and demanded appraisal. All of these actions were filed only after exhausting the Demand for Appraisal and following the submission of Civil Remedy Notice to the state of Florida Department of Insurance.

Scott Dinin has represented over six hundred individual property owners to obtain appraisal which resulted in additional payment of property damage claim by filing Demand for Appraisal to the various insurance companies. The filing of demand letters resulted in settlement in satisfaction of these client's claims without the need to file a complaint in state court.

Dinin Partners

President, Owner

Miami, FL

2001 – 2011

Property Insurance Litigation and General Practice of Law

Representing property owners regarding covered casualty losses which were then underpaid by their property insurance carriers. Filed Demands for Appraisal in accordance with Appraisal Clause on Insurance Policies, and when appraisal was not granted, sued under Breach of the Policy of Insurance Contract. Represented property owners from Southern Florida through Northern Florida and the panhandle.

Scott R Dinin

Broker/Realtor

Miami, FL

1995 – present

Residential and commercial real estate transactional realtor and broker.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Action Number: 18-cv-06245

ANCEL MONTENELLI,

Plaintiff,

vs.

EL CANTON REGIO CORPORATION

Defendant.

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF DEFAULT JUDGMENT

I, Scott R. Dinin, Esq., declare under penalty of perjury that the following facts are true and correct to the best of my information and belief:

I am the attorney for the Plaintiff in this action.

The claim of the Plaintiff is for the sum of \$ 12,959.80 (representing 25 hours of professional time for \$12,500 USD and expenses of \$459.80) plus interest from the date of judgment as provided by law, together with the costs of this action, as well as for injunctive relief consisting of alternations of the subject facility to bring it into compliance with the Americans with Disabilities act, specifically being: the provision of an accessible entrance (removal of step up and/or installation of a ramp) and signage displaying accessible route.

Attorney:

Scott R Dinin, Esq.

Sworn to and subscribed before me this 16th day of April, 2019

Notary Public
My Commission Expires:



Christopher DaSilva
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG212729
Expires 7/10/2022

Montinelli v El Canton

#	Notes	Owner	Date	Hours	Rate	Amount
1	telecon with client on this case	Scott Dinin	8/11/2016	0.5	\$500.00	\$250.00
2	research corporate ownership land and business	Scott Dinin	8/12/2016	1.5	\$500.00	\$750.00
3	Prepare Retainer and discussion with client	Scott Dinin	8/12/2016	1.8	\$500.00	\$900.00
4	Receive signed retainer from client, review and sign	Scott Dinin	8/15/2016	0.3	\$500.00	\$150.00
5	review file and corp owner for prep complaint	Scott Dinin	8/24/2018	0.5	\$500.00	\$250.00
6	Draft complaint, summons and civil cover	Scott Dinin	9/5/2018	3	\$500.00	\$1,500.00
7	efile complaint	Scott Dinin	9/12/2018	0.3	\$500.00	\$150.00
8	receive and review #2 Notice of Mandatory init discovery	Scott Dinin	9/13/2018	0.1	\$500.00	\$50.00
9	draft and efile #3 Form Atty Appearance	Scott Dinin	10/1/2018	0.3	\$500.00	\$150.00
10	#4 Ntc Docket Entry	Scott Dinin	10/1/2018	0.3	\$500.00	\$150.00
11	Summons to process server	Scott Dinin	10/15/2018	0.1	\$500.00	\$50.00
12	Draft and efile of Notice of Motion, Motion for Extension of Time and Proposed Order	Scott Dinin	10/15/2018	1.5	\$500.00	\$750.00
13	Filed Motion for Extension of Time to File Status Report with attached Proposed Order	Scott Dinin	10/15/2018	0.1	\$500.00	\$50.00
14	Receive and review #7 Order Grant Ext Time, Jnt Status Rpt, Status Hearing	Scott Dinin	12/19/2018	0.4	\$500.00	\$200.00
15	Receive and review #8 Minute Entry Dismissing Case	Scott Dinin	12/19/2018	0.4	\$500.00	\$200.00
16	Receive affidavit of service, draft notice of service, and Efile as #9 Ntc Filing ROS	Scott Dinin	12/20/2018	0.7	\$500.00	\$350.00
17	Draft and efile of Initial Status Report	Scott Dinin	12/20/2018	1.6	\$500.00	\$800.00
18	E-mail to Courier Service to deliver pleadings, initial status report and NOF ROS to Judge Blakey	Scott Dinin	12/21/2018	0.2	\$500.00	\$100.00
19	Contacted the clerk's office to find out the status of the case since it had been previously dismissed.	Scott Dinin	1/3/2019	0.2	\$500.00	\$100.00
20	Contacted the Clerk to find out if the case will be re-opened since the status report has been filed.	Scott Dinin	1/7/2019	0.3	\$500.00	\$150.00
21	efile #12 Ptf Request Clerk Default on Def	Scott Dinin	1/25/2019	0.1	\$500.00	\$50.00
22	E-mail to Chicago Messenger to deliver to Judge Blakey	Scott Dinin	1/25/2019	0.1	\$500.00	\$50.00
23	Draft of Request for Clerk's Default Against Defendant; Research on Local Rules for Illinois	Scott Dinin	1/25/2019	2.5	\$500.00	\$1,250.00
24	efile Notice if Request for Clerk's Default	Scott Dinin	1/25/2019	0.1	\$500.00	\$50.00
25	draft and efile Motion to Move Hearing	Scott Dinin	1/25/2019	1.5	\$500.00	\$750.00
26	draft and efile Notice of Motion with Court	Scott Dinin	1/25/2019	0.5	\$500.00	\$250.00
27	receive and review #15 Clerk's Ntc Minute Entry Status Conf 3-27-19	Scott Dinin	1/30/2019	0.4	\$500.00	\$200.00
28	communications and E-mail to potential local counsel regarding retainer and details regarding status of case	Scott Dinin	3/8/2019	0.6	\$500.00	\$300.00
29	E-mail follow-up and telecon to potential local counsel to be retained for hearing 3/27/19	Scott Dinin	3/20/2019	0.3	\$500.00	\$150.00
30	receive and review DE #16 notice appearance counsel	Scott Dinin	3/20/2019	0.2	\$500.00	\$100.00
31	receive and review DE #17 notice appearance counsel	Scott Dinin	3/27/2019	0.2	\$500.00	\$100.00
32	prepare and attend status hearing before Judge	Scott Dinin	3/27/2019	2.5	\$500.00	\$1,250.00
33	receive and review DE# 19 Cert of service of sending docs to defendant prepared by local counsel and discussion with local counsel to prep this pleading		3/27/2019	0.2	\$500.00	\$100.00
34	communications with local counsel for prep of default and discuss default and telecon with client on default and status	Scott Dinin	4/10/2019	0.4	\$500.00	\$200.00
35	telecon with client on this case	Scott Dinin	4/10/2019		\$500.00	\$0.00

36	review file for final default and review all costs and time	Scott Dinin	4/12/2019	1.3	\$500.00	\$650.00
	Total Time			25		\$12,500.00
1	Filing Fee		9/12/2018			\$400.00
1	Copy of Docket Report (2 pgs @ .20 each)	Scott Dinin	10/1/2018	0	no charge	\$0.00
2	Copy of #11 Clerk Ntc Case Reinstated (1 pg @ .20)	Marisol Garcia	1/15/2019	0	no charge	\$0.00
3	Copy of #4 Ntc Docket Entry (1 pg @ .20)	Scott Dinin	10/1/2018	0	no charge	\$0.00
4	Copy of #5 Ntc of Mtn (2 pgs @ .20 each)	Marisol Garcia	10/23/2018	0	no charge	\$0.00
	Copy of #6-1 Prop Order Ptf Mtn Ext Time File Status Rpt (1 pg @ .20)	Marisol Garcia	10/23/2018	0	no charge	\$0.00
6	Copy of #9 Ntc Filing ROS (3 pgs @ .20 each)	Marisol Garcia	12/20/2018	0	no charge	\$0.00
	Copy of # Judge Assign Blakey Mag Judge Finnegan (1 pg @ .20)	Scott Dinin	9/18/2018	0	no charge	\$0.00
8	Copy of #1 Complaint (13 pgs @ .20 each)	Scott Dinin	9/18/2018	0	no charge	\$0.00
9	Copy of #10 Ptf Status Rpt (2 pgs @ .20 each)	Marisol Garcia	12/20/2018	0	no charge	\$0.00
10	Copy of #1-1 Signed Civil Cover Sheet (1 pg @ .20)	Scott Dinin	9/18/2018	0	no charge	\$0.00
	Copy of #12 Ptf Request Clerk Default on Def (3 pgs @ .20 each)	Marisol Garcia	1/25/2019	0	no charge	\$0.00
12	Copy of #1-2 Summons (1 pg @ .20)	Scott Dinin	9/18/2018	0	no charge	\$0.00
	Copy of #13 Ptf Mtn to Move Status Hearing to 1-30-19 (3 pgs @ .20 each)	Marisol Garcia	1/25/2019	0	no charge	\$0.00
14	Copy of #14 Ntc of Motion (2 pgs @ .20 each)	Marisol Garcia	1/25/2019	0	no charge	\$0.00
	Copy of #15 Clerk's Ntc Minute Entry Status Conf 3-27-19 (1 pg @ .20)	Marisol Garcia	1/30/2019	0	no charge	\$0.00
16	Copy of #2 Ntc Initial Disc (1 pg @ .20)	Scott Dinin	9/18/2018	0	no charge	\$0.00
17	Copy of #3 Form Atty Appearance (1 pg @ .20)	Scott Dinin	10/1/2018	0	no charge	\$0.00
	Copy of #6 Ptf Mtn Ext Time File Status Rpt (2 pgs @ .20 each)	Marisol Garcia	10/23/2018	0	no charge	\$0.00
	Copy of #7 Order Grant Ext Time, Jnt Status Rpt, Status Hearing (1 pg @ .20)	Marisol Garcia	12/19/2018	0	no charge	\$0.00
20	Copy of #8 Minute Entry Dismissing Case (1 pg @ .20)	Marisol Garcia	12/19/2018	0	no charge	\$0.00
21	Copy of Docket (3 pgs @ .20 cents each)	Krystian Powell	3/28/2019	0	no charge	\$0.00
22	Copy of Docket (3pgs @ .20 cents each)	Krystian Powell	3/20/2019	0	no charge	\$0.00
23	Copy of Docket (4pgs @ .20 cents each)	Krystian Powell	3/27/2019	0	no charge	\$0.00
24	Copy of Docket Report (2 pgs @ .20 each)	Marisol Garcia	10/23/2018	0	no charge	\$0.00
25	Copy of Docket Report (3 pgs @ .20 each)	Marisol Garcia	12/20/2018	0	no charge	\$0.00
	Copies					\$0.00
1	Pd inv - Chicago Messenger Service re Courier to Judge. Dinin ck #5449	Rebecca Johnson	1/23/2019	0	N/A	\$19.80
2	Pd inv-Michael A Jones re ROS EL Canton Corp. ck #5401	Chris Dasilva	11/28/2018	0	N/A	\$40.00
	Messenger and Service of Process					\$59.80
	Total Expenses					\$459.80
	Total Time and Expenses					\$12,959.80

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANCEL MONTENELLI,

Plaintiff,

v.

EL CANTON REGIO CORPORATION
and JOHN DOE,

Defendants.

Case No.. 1:18-cv-06245
Honorable John Robert Blakey

DECLARATION OF KEVIN A. AMERIKS

I, Kevin A. Ameriks, state that if called as a witness, I could competently testify of my own personal knowledge to the following facts.

1. I am an adult citizen of the State of Illinois over the age of eighteen and fully competent to testify.
2. The plaintiff, Ancel Montinelli, retained me and my firm, Schain, Banks, Kenny & Schwartz, Ltd. ("Schain Banks") as its local counsel in this matter.
3. I am an associate at Schain Banks and I have more than 11 years of business and real estate litigation experience. My practice is and has been focused on commercial litigation. I was admitted and have practiced law in the State of Illinois since 2007. My hourly rate for work performed on the above captioned matter was \$285.00 per hour.
4. In addition to the services I provided the following attorney from Schain Banks also worked on this matter for plaintiff:

- a. Thomas Schick who is an associate with Schain Banks. Mr. Schick was admitted and has practiced law in the State of Illinois since 2018. His hourly rate was \$175.00 per hour.

5. I billed the plaintiff in this matter on a monthly basis at my hourly rate and the hourly rate for associates in effect when the time was incurred. I billed the plaintiff on a monthly basis for the costs incurred over the course of this litigation. True and correct copies of an itemized time report and an itemized expense report are attached to this affidavit as **Exhibit A**.

6. In the ordinary course of its business, Schain Banks maintains written records of the hours spent by the firm and costs expended with this lawsuit. This information is maintained and retrieved from computers which are programmed for the above purpose. The electronic computing equipment utilized by Schain Banks (Rainmaker) is recognized as standard in the legal industry, the entries are made in the regular course of business at or near the time of the happening of the act, work or event recorded, this particular computer produces an accurate record when properly employed and operated and this particular computer was properly employed and operated. Schain Banks operates in reliance on the above procedures and the accuracy of the written records generated thereby.

7. The attached time and expense reports reflect time and expenses which are documented and prepared by me in the ordinary course of my practice. It is part of my practice to document this time and these costs. The time and expense report accurately sets forth the services performed in this matter, the date those services

were performed, by whom the services were performed, the amount of time spent on each service, the hourly rate and the total charges, and any expenses incurred (which in this case there were none). All the time spent was reasonable and necessary for the prosecution of this lawsuit.

Pursuant to 28 U.S.C. § 1746, I declare under penalties of perjury under the laws of the United States of America that the following is true and correct.

Kevin A. Ameriks
Thomas J.K. Schick
Schain, Banks, Kenny, & Schwartz, Ltd.
70 West Madison Street, Suite 5300
Chicago, Illinois 60602
(312) 345-5700
kameriks@schainbanks.com
Attorney #6292277

By: K A
Kevin Ameriks

Date 04/19/19

SCHAIN BANKS KENNY & SCHWARTZ

Page 1

Billing Memorandum

Thru 04/19/19

Client 22129 Montenelli, Ancel
 Matter 00000 Montenelli v. El Canton

Billing Attorney 0017 Marty J. Schwartz
 Originating Attorney 0017 Marty J. Schwartz
 Responsible Attorney 0017 Marty J. Schwartz

Ancel Montenello
 c/o Scott Dinin
 4200 NW 7th Avenue
 MIAMI, FL 33127

**** Time ****

Date	Attorney	Time	Rate	Value	Diary
03/26/19	0033 Kevin A. Ameriks	0.10	285	28.50	file attorney appearance per local rule
03/27/19	0033 Kevin A. Ameriks	1.25	285	356.25	prepare and appear for status, coordinate service of order and filing
Total For Month		1.35		384.75	
04/10/19	0033 Kevin A. Ameriks	0.10	285	28.50	return dinin email re next court date and motion
04/12/19	0033 Kevin A. Ameriks	0.25	285	71.25	review their fees and communication w co-counsel re court on wednesday; review local rules and judge's standing order
04/14/19	0033 Kevin A. Ameriks	0.40	285	114.00	prepare default motion
04/15/19	0016 Thomas Schick	0.25	175	43.75	Drafted appearance for 4/15 appearance.
04/15/19	0033 Kevin A. Ameriks	0.75	285	213.75	review Human Rights Act and damages claim, review affidavit of counsel for default judgment motion
04/16/19	0016 Thomas Schick	0.25	175	43.75	Prepared for court appearance with KAA.
04/16/19	0033 Kevin A. Ameriks	0.10	285	28.50	review executed affidavit
04/17/19	0016 Thomas Schick	1.00	175	175.00	Court appearance regarding status on our motion for default judgment.
Total For Month		3.10		718.50	
Total Time		4.45		1,103.25	

EXHIBIT A